

REMARKS

Claims 1 and 4 are currently pending. Claims 2 and 3 have been cancelled and claim 1 has been amended to incorporate the limitations of claim 2.

35 U.S.C. §112 Rejections

Claim 1 stands rejected under 35 U.S.C. § 112, second paragraph, for failing to particularly point out and distinctly claim the subject matter which the applicant regards as the invention. Specifically, the Examiner objects to the use of “a small amount.” Claim 1 has been amended to positively recite the amounts of each of the elements in the composition, thus incorporating the limitations of claim 2.

Double Patenting

Claims 1-4 stand rejected for nonstatutory obviousness-type double patenting over claims 1-12 of U.S. Patent 6,410,050 B1 in view of Hansen et al. (U.S. 6,423,346). Applicants request withdrawal of this rejection, since the claims of the present application contain different subject matter from the claims of the '050 patent. Specifically, the base material is different, the amount of each of the components is different, and the forming step is new. In the present claims, the base material is fish gelatin, whereas in the '050 patent claims the base material is cellulose. In the present claims the base material forms 30-40% of the entire composition, whereas in the '050 patent claims the base material forms only 18-20% of the entire composition. In the present claims, the composition comprises: 0.5-1.0 % pectin, 0.01-0.05% glycerin, 0.1-0.5 % calcium gluconate, 0.1-0.5 % sucrose fatty acid esters, and 0.01-0.05 % glacial acetic acid, whereas in the '050 patent claims the composition comprises: 0.6-0.8 % pectin, 0.1-0.3 % glycerin, 0.03-0.05 % calcium gluconate, 0.2-0.5 % sucrose fatty acid esters, and 0.03-0.05 % glacial acetic acid. Furthermore, the '050 patent merely claims “forming a capsule” but does not provide a method of how this is done. The present claim 1 recites a detailed method of forming the capsule

including dipping, molding, and cooling for a specified amount of time at a specified temperature from the bottom and then the top. The Examiner states that the "processes for formation of the capsules...are essentially the same," but provides no basis for this assertion. The Examiner further cites Hansen (6,423,346) as a basis for using fish gelatin, however this combination is not supported. Hansen discloses the use of fish gelatin as a physiologically active substance, whereas in the present application fish gelatin is used to form a capsule for delivering an active substance. Thus, there is no motivation to combine Hansen with the '050 patent, and such a combination would still not disclose all the limitations of claim 1. Thus, withdrawal of this double patenting rejection is respectfully requested.

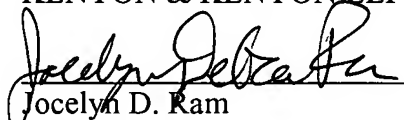
Conclusion

It is respectfully submitted that the present application is now in condition for allowance, which action is respectfully requested. The Examiner is invited to contact Applicants' representative to discuss any issue that would expedite allowance of the subject application.

Any fees for extension(s) of time or additional fees required in connection with the filing of this response, are hereby petitioned under 37 C.F.R. § 1.136(a), and the Commissioner is authorized to charge any such required fees or to credit any overpayment to Kenyon & Kenyon's Deposit Account No. 11-0600.

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